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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,894	09/22/2000	Larry Scheinberg	11847-002001	1229
26161	7590	11/24/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			HAVAN, THU THAO	
			ART UNIT	PAPER NUMBER
			3691	

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/667,894

Applicant(s)

SCHEINBERG ET AL.

Examiner

Thu Thao Havan

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 14 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14, and 16-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Detailed Action**

#### ***Response to Amendment***

Claims 1-12, 14, and 16-24 are pending. This action is in response to the amendment received September 5, 2006.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-12, 14, and 16-24 have been considered but are moot in view of the new ground(s) of rejection.

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **1-12, 14, and 16-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosler et al. (US 6,304,858) in view of Selleck (US 2001/0049651) and provisional application 60/200,248.

Re claims **1, 12, and 20**, Mosler teaches a method of clearing transactions on an electronic exchange comprising;

performing a settlement run after cessation of trading (fig. 5a (element S54 and S56)));

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automatically marking-to-market all open positions (col. 9, lines 19-38);

determining which one of a cash based margin protocol is required by an open position (col. 12, lines 1-29; col. 30, lines 43-52; col. 4, lines 46-61); and determining margin requirements for the open position according to the determined margin protocol (col. 21, lines 55-60; col. 30, lines 43-52).

However, Mosler does not explicitly teach an asset based margin protocol. On the other hand, Selleck discloses an asset based margin protocol when he discloses a method of trading asset-based instruments over the Internet (para. 0016, 0019-0020, 0028, and 0031-0033). Selleck discloses commodity exchanges for assets like pork-bellies and rice. He discloses a global trading system that enables anyone to buy, sell, and/or hedge any tradable asset or service via one online interface accessible through any Internet device using a Web browser. Global Trading (GT) enables every trader to trade on the price fluctuations of an underlying asset alone. GT enables every trader to lock in the price of any tradable asset (minus delivery and associated costs)--by buying an eContract. Thus, it would have been obvious to one of ordinary skill in the art to enable an asset based margin protocol in an electronic exchange method to determine market opening position since an example of assets include cash or cash equivalents.

Re claims **2** and **14**, Mosler teaches sending to subscribers or subscriber depository or guaranteeing bnks debits and/or credits and updating the resulting balances in each subscriber's account (col. 4, lines 46-61; fig. 5a).

Re claims **3, 16, and 21**, Mosler teaches disseminating position information but no daily pays or collects will take place so long as sufficient assets are already identified (col. 12, lines 1-19; col. 21, lines 55-60; col. 30, lines 43-52).

Re claims **4, 17, and 22**, Mosler teaches posting a position for a subscriber to a subscriber trading account as soon as any portion of an order is filled (col. 9, line 59 to col. 10, line 18).

Re claims **5, 18, and 23**, Mosler teaches determining whether the subscriber has a position at the other side of the market that can result in an offset of the position and the position at the other side of the market (col. 1, lines 37-49).

Re claims **6, 19, and 24**, Mosler teaches liquidating the trade with any resulting credit or debit identified as a realized gain or loss in the subscriber's trading account (fig. 5a).

Re claim **7**, Mosler teaches recording assets that are delivered to the exchange for satisfying margin (col. 12, lines 1-19; col. 21, lines 55-60; col. 30, lines 43-52).

Re claim **8**, Mosler teaches determining an equivalent asset value to reflect a capital charge applied to special classes of assets (abstract).

Re claim **9**, Mosler teaches maintaining an asset inventory for each trading account, and indicating whether assets in the trading account are limited to covering a single contract genus or a specific delivery commitment, or can be applied to multiple products (col. 4, lines 25-38).

Re claim **10**, Mosler teaches determining an initial margin for each contract species held in a subscriber's trading account (col. 21, lines 55-60; col. 30, lines 43-52).


Re claim **11**, Mosler teaches determining a variation margin and applying the variation margin to the subscriber's trading account (col. 12, lines 1-19).

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

  
Thu Thao Havan  
Art Unit: 3691  
11/20/06